

November 8, 2004

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Progeny LMS, LLC Petition for Rulemaking to Amend Part 90 of the Commission's Rules Governing Location and Monitoring Service("LMS") to Provide Greater Flexibility, RM-10403*

ExParte Presentation

Dear Ms. Dortch:

Progeny LMS, LLC ("Progeny") hereby comments upon *ex parte* presentations and related extension requests in the above-captioned proceeding. Progeny remains steadfast in its positive outlook about the ability of LMS licensees to deliver critical public services, including much-needed homeland security applications, once the LMS rules are updated to reflect technology advances and market developments. In the 32 months since Progeny filed the rulemaking petition that is the subject of this record, the need for such innovative services to be made available to consumers and government agencies has remained acute.

Progeny's petition is focused on issues that are emblematic of the Commission's own focus on the need to ensure effective communications services related to homeland security requirements. Progeny's request for a re-evaluation of the LMS rules also is in line with the Commission's work to improve the public benefits derived from spectrum use by moving away from a "command and control" approach and relying on regulatory flexibility to respond to market demands and provide interference protection.

Spectrum sharing opportunities are a key component of policy tools evaluated in the President's Spectrum Initiative to facilitate deployment of new and expanded services. Similarly, this rulemaking proceeding provides the FCC an opportunity to affirm its commitment to regulatory flexibility and interference protection in a manner that accommodates all stakeholders in the LMS band. In particular, LMS spectrum at

902-928 MHz holds value for both licensed and unlicensed applications. In numerous recent proceedings, the FCC has weighed this balancing of interests in a manner that accommodates unlicensed technologies while maintaining the public interest in licensed services through technologically sound sharing criteria.

Finally, the suggestion that Progeny's petition is creating delays in the Commission's consideration of buildout extension requests for other licensees in this band is unwarranted<sup>1</sup>. Progeny supports buildout extension requests in this band. Its consistent point of view is that the LMS rules' outdated use and technology limitations have impeded such buildout. Progeny believes that the Commission favorably should consider such extension requests on their merits.

In accordance with Section 1.1206(b) of the Commission's rules, please accept this original and one copy for submission.

Respectfully yours,

/s/ Janice Obuchowski  
Janice Obuchowski  
Of Counsel  
Progeny LMS, LLC

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<sup>1</sup> See Letter from Warren C. Havens filed October 25, 2004, in Docket RM-10403.